

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KIM SNELL,
Plaintiff,

V.

THE STATE OF WASHINGTON;
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, JUDITH A.
FITZGERALD and UNA I. WILEY,
Defendant.

CASE NO. 3:20-cv-06028-JHC
ORDER

This matter comes before the Court on Plaintiff's Motion for Reconsideration. Dkt. # 50. The Court concludes that there is no manifest error in its prior ruling. *See* LCR 7(h). And even if Plaintiff were correct that she spoke on a matter of public concern, qualified immunity would preclude her § 1983 claims.

As the Court explained in its prior Order (Dkt. # 48), the Ninth Circuit has held that the determination of whether a public employee’s speech is constitutionally protected “turns on a context-intensive, case-by-case balancing analysis,” and that “the law regarding such claims will rarely, if ever, be sufficiently ‘clearly established’ to preclude qualified immunity under *Harlow* and its progeny.” *Moran v. State of Wash.*, 147 F.3d 839, 847 (9th Cir. 1998). Plaintiff has cited several cases holding that the right to exercise protected speech without suffering retaliation is

1 “clearly established.” Dkt. # 50 at 7 (citing *Hartman v. Moore*, 547 U.S. 250, 256 (2006);
2 *Aydelotte v. Town of Skykomish*, C14-307MJP, 2020 WL 4347261, at *5 (W.D. Wash. July 29,
3 2020); *Tucker v. State of Cal. Dept. of Educ.*, 97 F.3d 1204, 1210 (9th Cir. 1996). But Plaintiff
4 does not cite any cases holding that speech like Ms. Snell’s at issue is, in fact, constitutionally
5 protected.

6 The question before the Court is whether Plaintiff’s speech was so clearly protected by
7 the First Amendment that it would have been patently unreasonable for Defendants to conclude
8 that their actions were lawful. See, e.g., *Lytle v. Wondrash*, 182 F.3d 1083, 1088 (9th Cir. 1999).
9 Plaintiff has not persuaded the Court on this point. The Court therefore denies the motion.

10 Dated this 8th day of May, 2023.

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12 John H. Chun

13 John H. Chun
14 United States District Judge
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